

FILED

July 11 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O'NEILL LAW OFFICE, PLLC

402 First St. East, Suite 201

P.O. Box 699

Polson, MT 59860

MATTHEW H. O'NEILL

Attorney at Law

Telephone: (406) 883-5444

Fax: (406) 883-1585

matt@polsonlaw.com

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July 9, 2008

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Montana Supreme Court

P.O. Box 203003

Helena, MT 59620-3003

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: Proposed 2008 Montana Code of Judicial Conduct Rule 3.10

Dear Honorable Justices:

I am writing to comment regarding the proposed Rule 3.10 to the Montana Code of Judicial Conduct which would prohibit judges of limited jurisdiction from the practice of law.

I have enjoyed practicing before a number of justices of the peace and am truly convinced that a law trained judge gives far superior judicial service to the public than a lay justice.

Adoption of Rule 3.10 to the Code of Judicial Conduct will deprive many Montanans of an opportunity to have their Justice Court and Small Claims Court matters handled by a judge with a law degree. I believe the existing Code of Conduct for Lawyers when combined with the existing Code of Judicial Conduct offers more than adequate assurances of the highest ethical conduct and there is no need to adopt this amendment.

It would appear that the primary purpose of this amendment is to avoid the appearance of impropriety which seems to elevate form over substance in a fashion that does nothing to serve the ends of justice or the people of Montana. This Court has previously held that, "when the government intrudes upon a fundamental right, any compelling state interest for doing so must be closely tailored to effectuate only that compelling interest." *State v. Pastos* (1994), 269 Mont. 43 at 47. Certainly the avoidance of conflict of interest or the appearance of impropriety can be protected without a wholesale ban on an individual's fundamental right to pursue employment.

Sincerely yours,



MATTHEW H. O'NEILL

MHO:rjh